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T. E. Seidel Electric, Inc. and Local 234, International Brotherhood of Electrical Workers, AFL-CIO. Cases 32-CA-15283 and 32-CA-15377

October 21, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon charges filed by the Union on March 7, and April 16, 1996, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on July 16, 1996, against T. E. Seidel Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On September 23, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On September 25, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 7, 1996, notified the Respondent that unless an answer were received by August 19, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, with an office and place of business in Salinas, California, has been engaged as an electrical contractor in the building and construction industry. During the 12-month period preceding issuance of the consolidated complaint, the Respondent, in the course and conduct of its business operations, sold and shipped goods or provided services valued in excess of \$50,000 directly to customers or business enterprises who themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About December 14, 1995, the Respondent refused to hire employee-applicants James Nichols and Forest Bayer. About April 12, 1996, the Respondent discharged its employee William Nye, and since that date has failed and refused, and continues to fail and refuse, to reinstate him to his former position of employment. The Respondent engaged in this conduct because Nichols, Bayer, and Nye joined or assisted the Union or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to hire employee-applicants James Nichols and Forest Bayer, we shall order the Respondent to offer them immediate employment which they would have had but for the discrimination against them, or, if those jobs no longer exist,

to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Furthermore, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging William Nye, we shall order the Respondent to offer the discriminatee immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

Backpay for the discriminatees shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, the Respondent shall also be required to expunge from its files any and all references to the unlawful refusal to hire Nichols and Bayer and the discharge of Nye, and to notify them, in writing, that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, T. E. Seidel, Salinas, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire employee-applicants or discharging its employees because they joined or assisted the Union or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, offer James Nichols and Forest Bayer immediate employment which they would have had but for the unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

(b) Within 14 days from the date of this order, offer William Nye immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make James Nichols, Forest Bayer, and William Nye whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful refusal to hire Nichols and Bayer and the discharge of Nye, and within 3 days thereafter, notify them, in writing, that this has been done and that the unlawful conduct will not be used against them in any way.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Salinas, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 7, 1996.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 21, 1996

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES
GOVERNMENT

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to hire employee-applicants or discharge our employees because they join or assist Local 234, International Brotherhood of Electrical Workers, AFL-CIO, or engage in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer James Nichols and Forest Bayer immediate employment which they would have had

but for the unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

WE WILL offer William Nye immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make James Nichols, Forest Bayer, and William Nye whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful refusal to hire Nichols and Bayer and the discharge of Nye, and within 3 days thereafter, notify them, in writing, that this has been done and that the unlawful conduct will not be used against them in any way.

T. E. SEIDEL ELECTRIC, INC.